CRIMINAL JUSTICE COORDINATING COUNCIL

Information Technology Advisory Committee

Criminal Justice Information System Legislation For The District of Columbia

Prepared by the

Criminal Justice Information System
Legislative Working Group
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Criminal Justice Information System Legislation For the District of Columbia

I. National Experience

Police records from 3X5 cards to 'head-band notes", to more formal Reports of Arrest and Prosecution, or RAP Sheets, have existed since the first wanted poster. Notes evolved into records, records into files, files to systems, and those systems became automated. Those records, files and systems have enormous variations in complexity, accuracy and completeness. These inconsistencies reflected the relative importance of records to individual agencies and the priority for record keeping within the mission of each department. All this changed with the passage of the Omnibus Crime Control and Safe Streets Act of 1968 and the Crime Control Act of 1973. These laws had dramatic impact upon police records at two levels: funding and standards.

Congress determined that criminal justice information systems, particularly criminal history, had long been neglected and therefore used the legislation as an opportunity to provide incentive for states to build and improve such systems. Substantial funding programs were established under the Department of Justice (DOJ). These inaugural programs included the Comprehensive Data Systems (CDS) program overseen by the Law Enforcement Assistance Administration (LEAA). Of the five CDS components initiated 25 years ago, four remain in some form, by some name, today:

- Computerized Criminal History (CCH)
- Uniform Crime Reporting (UCR)
- Statistical Analysis Centers (SAC)
- Offender Based Transaction Statistics (OBTS)

Those programs and the agencies administering them have evolved over the last 25 years. Significant levels of funding continue in programs such as the National Criminal History Information Program (NCHIP) administered by the DOJ Bureau of Justice Assistance (BJA), and DOJ Bureau of Justice Statistics (BJS) programs that include the Byrne Memorial Formula Grant Program (Byrne).

The standards for record systems enabled by the funding programs were established by federal regulation, Title 28, Chapter I, Part 20, Criminal Justice Information Systems (Attachment A). This seminal document continues to have a direct effect upon all criminal history systems whether at federal, state, county or municipal levels. The penalty for failure to comply with this regulation includes exclusion from federal funding programs administered by BJS and BJA, and loss of access to federal information systems maintained by the Federal Bureau of Investigation (FBI). For that reason, virtually every piece of state criminal history information system (CJIS) or criminal history record information (CHRI) legislation is based upon this regulation.

II. District of Columbia Environment

In 1998, the justice community of the District of Columbia formed the Criminal Justice Coordinating Council (CJCC), prompting a series of decisions that established a course of action for information systems that in many ways paralleled that set by Congress. Like Congress, the CJCC found information systems to be at a variety of stages of development and levels of competence, without central coordination, funding or standards. The CJCC took action to address each of those challenges.

First the CJCC established the Information Technology Advisory Committee (ITAC), with the Information Technology Liaison Officer (ITLO) as staff, to provide a center for communication and planning. The CJCC then established a system improvement theme for the Byrne Memorial Formula Grant Strategic Plan. The ITAC reviewed and approved a three-year spending program to strengthen both individual agency systems and develop an inter-agency justice information system. The ITAC then established Working Groups to utilize consensus to document community-wide models and standards.

The ITAC Working Groups included a Privacy and Security Working Group (P&SWG). The P&SWG examined and documented a series of difficult privacy and security issues, producing a ten-chapter paper offering models, prototypes and discussions. One chapter discussed the need for legislation and is excerpted in Attachment B. The review of a nation-wide survey of state criminal justice information system (CJIS) legislation prompted the legislative recommendation. The paucity of D.C. law and regulations supporting CHRI was a clear statement of need. The P&SWG recommended a review of

existing DC codes, regulations and rules, Federal CJIS regulations, other applicable state codes, and the preparation of comprehensive DC CJIS legislation.

In a seemingly unrelated action in February 2000, the CJCC formed the Positive Identification Work Group to examine issues related to fingerprinting practices in the District of Columbia. The Group focused on fingerprint supported identification and its impact upon access and dissemination of criminal history record information. The Group discovered the significant differences between police records and CHRI. They easily determined the District's practices differed to a great extent from those of other similar cities and states. Their findings included the fact that many policies intended to govern the District's CHRI are nonexistent, out of date, or simply not followed. The Group recommended that the District draft CHRI legislation be developed to remedy this situation (Attachment C).

III. Criminal Justice Information System (CJIS) Legislative Group

Based on the recommendations of the P&SWG and the Positive Identification Work Group, the ITAC formed an ad hoc CJIS Legislative Work Group (CLWG) charged with drafting comprehensive CJIS legislation for the District of Columbia (Attachment D). ITAC members were invited to nominate agency personnel to serve on this working group. Two staff were provided by the CJCC. This 13 member, 10 agency, Work Group was provided a comprehensive reference notebook and technical assistance from a CHRI legislative expert from SEARCH Group. (Http://www.search.org) After a thorough review of Title 28, and a background briefing by the ITLO, the CLWG established ground rules for their effort to produce this draft:

- The draft CJIS legislation would center on Title 28 regulations
- The draft CJIS legislation would update existing District of Columbia codes, regulations and court rules; some dating from the early 1970's
- The draft CJIS regulation would be compared to and contrasted with as many as five other state CJIS laws
- The draft would be prepared as if there were no partitions between municipal and federal agencies, but as if this legislation was for a single state government
- The "straw man", or initial draft would be prepared by the legislative technical assistance expert and CJCC staff
- Each individual section would be required to withstand stand-alone examination
- Final Draft wording would be reached through consensus
- Records of points which were subject to detailed, often intense, discussion would be maintained as a "Legislative History" so that opposing points of view could be examined later by ITAC and CJCC
- The draft CJIS legislation would be offered to the ITAC for further discussion, review and approval
- The reviewed draft legislation would be offered by the ITAC to the CJCC where CJCC members from both the D.C. City Council and federal

agency representatives would determine the appropriate paths for the draft to take for legislative action.

The CLWG met bi-weekly, in two to three hour work sessions, starting the last week of May. Prior to each work session the sections for that meeting were distributed for review. Members brought examples of suggested modifications, additional wording, as well as additional references in DC and federal law. Differences in views were documented during each meeting. Following each meeting a set of meeting notes reflecting the discussions and achievements of the work session were distributed for review. In addition, a "mark up" copy documenting the work product of the past meeting was distributed. Each subsequent meeting started with a review of the mark-up to determine that it accurately reflected the proposed changes.

The sectional reviews concluded with the first review of the entire piece of legislation. This review allowed adjustment of the draft to reflect inconsistencies between sections and the alignment of references between sections. This review also allowed the re-examination and reopening of discussions of sections that had been "completed" in earlier work sessions. The draft resulting from this review was examined by the legislative technical assistance expert and returned to the CLWG. The final draft and the "Legislative History" was then given one concluding examination by the CLWG and approved for distribution to the ITAC.

The final draft of the proposed CJIS Legislation prepared by the CJIS Legislative Work Group follows in the next chapter. The subsequent chapter provides a description of certain discussions, dissenting and opposing views, a Legislative History.

Information Technology Advisory Committee

Criminal Justice Information System Legislative Group

District of Columbia
Criminal Justice Information System Legislation

FINAL DRAFT

Purpose of Criminal Justice Information System Information Legislation

The purpose of this legislation is to create and maintain an accurate and efficient criminal justice information system in the District of Columbia, consistent with applicable federal law and regulations, the need of criminal justice agencies in the District for accurate, complete and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

In order to achieve these results, the District of Columbia will

- Create a Central Repository for criminal history record information
- Require the reporting of accurate, complete and current information to the Central Repository by all criminal justice agencies
- Establish procedures to insure that criminal history record information is kept secure, accurate, complete and current
- Prohibit the improper dissemination of criminal history record information
- Provide a basic statutory framework to accomplish objectives.

Section 1. Definitions.

For purposes of this chapter:

(1) "Criminal history record information" means information pertaining to natural persons contained in records collected and maintained by, or obtained from, criminal justice agencies which provide individual identification of record subjects together with notations relating to such persons' involvement in the criminal justice system as alleged or convicted offenders. The term includes notations of arrests; detentions; indictments,

informations or other formal documents setting out criminal charges; any dispositions arising from such charges, including dismissals, acquittals and convictions; sentences; and correctional supervision and release, including information relating to probation or parole or supervised release status. The term includes acquittals by reason of insanity, and findings of incompetence. The term does not include:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices, whether manual or automated, and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Information contained in intelligence, investigative, law enforcement work product record files or law enforcement work-product records used solely for law enforcement investigation purposes;

(e) Information contained in presentence investigation reports or other reports prepared for use by a court in sentencing or the exercise of criminal jurisdiction;

(f) Records of traffic violations that are punishable by a maximum term of imprisonment of ninety days or less.

(g) Records of municipal regulation violations that are punishable by a maximum term of imprisonment of ninety days or less.

(h) information relating to juveniles other than those who are charged as adults. .

(2) “Central repository” or “repository” means the information system developed and operated by [Name of Agency] pursuant to Section 3 to serve as the central repository of criminal history records for the District of Columbia. For purposes of this chapter, the central repository shall be considered to be a criminal justice agency.

(3) "Conviction record" means criminal history record information relating to criminal justice proceedings that have led to a conviction or other disposition adverse to the subject, including an entry of a judgment of guilty following forfeiture of collateral, an acquittal due to a finding of not guilty by reason of insanity or a finding of incompetence.

(4) "Criminal justice agency" means a court or a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(5) "The administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, prosecution, defense (with respect to the defense attorney’s records of their client defendants), adjudication, post-trial release correctional supervision, supervision of juvenile offenders with adult arrest book records, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities; the collection, storage and dissemination of criminal history record information; and the compensation of victims of crime. The term does not include the activities of private detectives or investigators, personnel

investigators or officers, private security agents or other persons who do not ordinarily participate in activities involving the detection, apprehension, prosecution or punishment of criminal offenders.

(6) "Disseminate" or "dissemination" means to transmit, or the transmission of, criminal history record information in any oral, automated, electronic or written form. The term does not include:

(a) the transmittal of such information within a criminal justice agency;
(b) the reporting of such information as required by Section 5 of this chapter; or
(c) the transmittal of such information between criminal justice agencies in order to permit the continuation of criminal justice proceedings against a person relating to the same offense or offenses.

(7) "Criminal justice purpose" means a use of criminal history record information for a purpose related to the administration of criminal justice, including criminal justice agency employment, the identification, location and apprehension of fugitives or wanted persons, the recovery of stolen property and the reporting of recent arrests, charges and other criminal justice activity.

(8) "Noncriminal justice purpose" means a use of criminal history record information for a purpose not related to the administration of criminal justice.

Section 2. Criminal Justice Information System Advisory Board.

(a) Creation and Membership. The Criminal Justice Information System Advisory Board is established. The board shall consist of one member from each of the following agencies or offices, appointed by the head of each such agency or office:

(1) the Superior Court of the District of Columbia;
(2) the Metropolitan Police Department;
(3) the Court Services and Offender Supervision Agency;
(4) the United States Attorneys Office for the District of Columbia;
(5) the Public Defender Service;
(6) the Office of the Chief Technology Officer for the District of Columbia;
(7) the Office of the Corporation Counsel;
(8) the Pretrial Services Agency;
(9) the District of Columbia Department of Corrections;
(10) the Federal Bureau of Prisons;
(11) the United States Parole Commission; and
(12) the Department of Human Services' Youth Services Administration.

(b) Appointments. The term of appointment to the board will be three years.

(c) Vacancies. A vacancy occurring before the expiration of a term shall be filled by the appointing authority for the remainder of the term.

(d) Officers. The board shall elect a chairman and a vice-chairman to preside in the chairman's absence.

(e) Meetings. The board shall meet at least once every six months. A member who is unable to participate in a board meeting or activity may designate a person from the same agency or office to act as proxy, including voting. A proxy may not preside over a board meeting. A majority of members or their proxies shall constitute a quorum for the transaction of business.

(f) Duties. The board shall—

(1) advise the [Agency that maintains the repository] and other criminal justice agencies in the District of Columbia on matters pertaining to the development and operation of the central repository described in Section 3 and other criminal justice information systems;

(2) provide advice to the central repository and other criminal justice agencies concerning the adoption of regulations and procedures governing the maintenance, dissemination and use of criminal history record information; and

(3) recommend any legislation necessary for the implementation, operation, maintenance and dissemination of criminal history record information.

(4) hear and determine administrative appeals concerning decisions by criminal justice agencies relating to the rights of review and challenge by records subjects pursuant to Section 7.

Section 3. Duties of the [Repository Agency Head] Regarding Information Systems.

The [Head of the agency that houses the repository] shall:

(a) establish, maintain and operate an information system which shall serve as the central repository of criminal history record information for the District of Columbia and shall collect, store and disseminate criminal history record information as provided in this chapter;

(b) establish, maintain and operate a communication system capable of transmitting criminal history record information to and among criminal justice agencies in the District of Columbia;

(c) consult with the Criminal Justice Information Systems Advisory Board regarding matters concerning the operation of the central repository and the adoption of regulations under this chapter;

(d) cooperate with the Federal Bureau of Investigation, the criminal history record repositories of other states, and other appropriate agencies and systems, in the development and operation of an effective interstate system of criminal history records; and

(e) promulgate appropriate regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act, and to establish, operate

and maintain the criminal justice information system. The Superior Court for the District of Columbia and the Chief Judge shall also adopt appropriate rules for the same purposes for the judicial branch of government.

Section 4. Fingerprinting.

(a) Fingerprinting at Arrest. Following an arrest, the arresting officer shall, without undue delay, take or cause to be taken the fingerprints of the arrested person if an offense which is the basis of the arrest is an offense that qualifies as criminal history record information.

(b) Fingerprinting after Summons. At the arraignment or first appearance of a person whose court appearance has been secured by a summons issued pursuant to an accusatory instrument charging an offense covered by subsection (a), the court should order that the person be fingerprinted without undue delay.

(c) Fingerprinting of Persons already in Custody. When a charge for an offense covered by subsection (a) is brought against a person who is already in the custody of a law enforcement or correctional agency and such charge is filed in a case that is separate from the case for which the person was arrested or confined, the agency with custody of the person shall, without undue delay, take or cause to be taken the fingerprints of the person in connection with the new case.

(d) Fingerprinting after Conviction. When a defendant is convicted by a court in the District of Columbia of an offense covered by subsection (a), the court should determine whether the defendant has been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, should order that the defendant be fingerprinted without undue delay.

(e) Fingerprinting by Correctional Facilities. Persons in charge of correctional facilities in the District of Columbia shall, without undue delay, take or maintain the fingerprints of all persons received on criminal commitment to such facilities.

(f) Submission of Fingerprints to Repository. Fingerprints taken after arrest pursuant to subsection (a), after court appearance pursuant to subsection (b) or from persons already in custody pursuant to subsection (c) shall be forwarded to the repository within 72 hours. Fingerprints taken from convicted persons pursuant to subsection (d) or from persons received by correctional facilities pursuant to subsection (e) shall be forwarded to the repository within 10 days. In all cases, such fingerprints shall be forwarded in the form specified by the repository and shall be accompanied by such additional identifying information as the repository may require.

Section 5. Reporting of Criminal History Record Information.

(a) Agency Reporting Requirements. After consultation with the Criminal Justice Information System Advisory Board and affected agencies, the [Repository Agency Head] shall by regulation designate which criminal justice agencies in the District of Columbia are responsible for reporting the events described in subsection (b) of this section and the manner and form in which the events shall be reported.

(b) Reportable Events. Criminal justice agencies designated under subsection (a) of this section shall report the following events to the repository if they occur in connection with an offense that qualifies as criminal history record information.

(1) an arrest, with or without a warrant, or an escape after arrest;

(2) the release of a person after arrest without charges being filed;

(3) the admittance to, release or escape from, or unlawful evasion of, official custody in a jail or correctional facility, either pretrial or post-trial;

(4) a decision by a prosecutor or a grand jury not to commence criminal proceedings or to defer or indefinitely postpone prosecution;

(5) a decision by a prosecutor to decline to prosecute some, but not all, of the charges forwarded by the arresting agency or to add charges to those forwarded by the arresting agency;

(6) the filing of a charging document, including an indictment, a criminal complaint, a criminal information, or a petition or other document showing a violation of bail, probation, custody, supervised release, or parole, or the amendment or dismissal of any such charging document;

(7) the failure of a person to appear in court as ordered;

(8) an acquittal, dismissal, conviction, or other disposition of charges set out in a charging document described in paragraph (6) of this subsection, including a conviction resulting from forfeiture of collateral;

(9) the imposition of a sentence or the granting of a suspended imposition of sentence under Title 16, Sections 710 - 11

(10) the commitment to, or the release or escape from, a correctional, or custodial, facility;

(11) the commitment to or release from the supervision of a probation, supervised release, or parole agency;

(12) a revocation of probation, supervised release, or parole or other change in probation or parole status;

(13) a commitment to or release from a hospital or other facility as not criminally responsible or as not competent to stand trial;

(14) the filing or withdrawal of an action in an appellate court relating to a conviction or sentence;

(15) a judgment of a court that reverses, amends, remands, vacates, or reinstates a criminal charge, conviction, or sentence;

(16) a pardon, executive clemency, commutation of sentence, or other change in the length or terms of a sentence by executive or judicial action; and

(17) any other event required to be reported under regulations adopted under this chapter.

(c) Form and Manner of Reporting. The form and content of reported information and the method of reporting to the repository shall be specified in regulations adopted by the [Repository Agency Head] under this chapter. The information reported to the repository shall include the numerical cycle identifier for the specific arrest cycle related to the agency report.

(d) Reporting Time Requirements. Information pertaining to an arrest as required by subsection (b)(1), to the release of a person after arrest without the filing of charges as required by subsection (b)(2) or to a decision by a prosecutor or grand jury not to commence criminal proceedings or to defer or indefinitely postpone prosecution as required by subsection (b)(4) shall be reported to the repository within 72 hours and shall be entered into the repository's database within 72 hours after receipt. Information pertaining to any other reportable event set out in this section shall be reported to the repository within 30 days and shall be entered into the repository's database within 30 days after receipt.

Section 6. Dissemination of Criminal History Record Information.

(a) Confidentiality. Criminal history record information is confidential and is exempt from disclosure under the District of Columbia Freedom of Information Act (D. C. Code, Sections 1-1521 through 1-1529). Except as provided in this section or by any other provision of the District of Columbia Code, or by court order or rule, criminal history record information may not be disseminated to any person or entity, nor may the existence or nonexistence of criminal history record information be revealed or confirmed to any person or entity.

(b) Dissemination for Criminal Justice Purposes. Criminal justice agencies may disseminate criminal history record information to other criminal justice agencies for criminal justice purposes without cost and without the authorization of the persons to whom the information relates. Prior to any such dissemination, a criminal justice agency other than the central repository shall make an inquiry of the central repository to obtain the most current and complete information available, unless--

(1) the information is needed for a purpose concerning which time is essential and the central repository cannot respond within the required time;
(2) the information relates to incidents within the direct knowledge of an officer, agent or employee of the criminal justice agency and is known to be current and accurate;

(3) the information was received from the central repository no more than 30 days before the dissemination; or
(4) the information is disseminated pursuant to a court rule or court order referring only to information in the files of the criminal justice agency.

(c) Dissemination for Noncriminal Justice Purposes. The central repository shall disseminate criminal history record information for noncriminal justice purposes subject to the following requirements and limitations:

(1) The identity of record subject shall be verified by a comparison of fingerprints or other reliable biometric identification characteristics submitted by the requestor;
(2) Unless dissemination is otherwise prohibited by law, where applicable law does not provide otherwise, Criminal History Record Information shall be disseminated in a form that reveals only entries relating to:
(a) criminal convictions; and
(b) not to include arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or upon information disclosing that the police have elected not to refer the matter for prosecution, or that the Corporation Counsel or the United States Attorney have elected not to commence criminal proceedings or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.
(3) Records, or statements of the non-existence of information that may be released under this section, shall be released to applicants upon the payment of fees based upon the cost of producing such records, provided that no fees shall be required for any record requested by any agent of the Federal Government or the Government of the District of Columbia for a governmental purpose;
(4) An applicant who is not the person to whom a requested record relates shall provide a release which specifies the period for which it is valid, the purpose for which it shall be used, and the entities to whom it will be releasable, in proper form executed by the person to whom the record relates; and
(5) The information shall be used only for the purposes for which it is provided and shall not be disseminated outside of the agency or organization to which it is provided.

(d) Dissemination for Contractual Services. Criminal justice agencies may disseminate criminal history record information to individuals and organizations pursuant to specific written agreements for the provision of services related to the administration of criminal justice. Such agreements shall specifically authorize access to information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information and provide sanctions for violations of the terms of the agreements.

(e) Dissemination for Research Purposes. Criminal justice agencies may disseminate criminal history record information to individuals and organizations pursuant to specific

written agreements for the conducting of research or evaluative or statistical activities. Such agreements shall specifically authorize access to information, limit the use of the information to the research, evaluative or statistical purposes for which it is provided, ensure the security and confidentiality of the information and provide sanctions for violations of the terms of the agreements.

(f) Dissemination Logs. A criminal justice agency that maintains and disseminates criminal history record information shall maintain a log of all disseminations except those stating the nonexistence of information that may be released under this chapter. Such logs shall be maintained for a period of at least three years and shall include:

(1) the identity of the record subject;

(2) the identity of the person to whom, or the agency or organization to which, the information was disseminated;

(3) the date on which the information was disseminated; and

(4) a brief description of the information that was disseminated or a means of determining the information that was disseminated.

Section 7. Review and Challenge by Record Subjects.

(a) Right to Review. A criminal justice agency shall permit a person who is, or believes he or she may be, the subject of a criminal history record maintained by the agency to appear in person during the agency's normal business hours and review any criminal history record information pertaining to the person maintained by the agency. Criminal justice agencies shall establish rules and provide forms to facilitate such review, including rules relating to identification requirements, reasonable periods of time to be allowed for review, and assistance by a person's counsel, interpreter or other appropriate person. A person shall be permitted to make and retain notes relating to information pertaining to him or her and shall upon request be provided with a copy of such information, at no charge, for the purpose of challenge under this section.

(b) Notice of Challenge. A person who has inspected criminal history record information relating to him or her may challenge the completeness or accuracy of the information by giving written notice of such challenge to the Central Repository and to the criminal justice agency at which the information was inspected, if other than the Central Repository. The notice shall set forth the portion of the information challenged, the reason for the challenge and the change or changes requested in order to complete or correct the information and shall be accompanied by certified documentation or other evidence supporting the challenge, if available. The notice shall contain a sworn statement, under penalty of perjury, that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(c) Audit and Determination by the Central Repository. Upon receipt of the notice, the Central Repository shall conduct an audit of that part of the person's criminal history record information necessary to determine the validity of the challenge. As part of the audit, the Central Repository may require any criminal justice agency that was the source

of challenged information to verify the information. The Central Repository shall provide written notice to the person of the results of its audit and its determination within 90 days after receipt of the notice of challenge. If the challenge or any part of it is rejected, the notice shall inform the person of the rights of appeal provided under this section. A copy of the notice shall be provided to any criminal justice agency with which a copy of the challenge has been filed.

(d) Correction of Records. If the challenge or any part of it is determined to be valid, the Central Repository shall make appropriate corrections to its records and shall provide notice of the corrections to any person or agency known or believed to maintain incomplete or inaccurate information. Such person or agency shall take appropriate steps to correct its records and shall certify to the Central Repository the actions taken. . A criminal justice agency required to correct criminal history record information pursuant to this section that has previously disseminated such information shall give written notice of the correction to any persons or agencies to whom the information was disseminated, requesting that they make any necessary corrections in their records and certify to the disseminating agency that the corrections have been made.

(e) Administrative Appeal. A person who is, or believes he or she may be, the subject of a criminal history record aggrieved by a decision of a criminal justice agency concerning the determination made under this section may appeal to the Criminal Justice Information Systems Advisory Board. The Board shall establish rules and procedures governing such appeals, which shall include provisions relating to the form, manner and time for taking appeals, hearing and determining appeals and implementing appellate decisions.

(f) Judicial Review. A person who is, or believes he or she may be, the subject of a criminal history record aggrieved by a decision of the Criminal Justice Information Systems Advisory Board under this section may seek applicable judicial review of this administrative agency ruling in the District of Columbia Superior Court.

Section 8. Completeness and Accuracy of Criminal History Record Information.

(a) Criminal justice agencies shall implement procedures reasonably designed to ensure that criminal history record information they maintain and disseminate is accurate and complete, including:

> (1) data collection, data entry and systematic audit procedures, including automated edit and verification programs, to minimize the entry of inaccurate information and to detect and correct inaccurate information;
> (2) audits of randomly selected records and disseminations every two years to monitor accuracy and completeness levels, and certification to the Central Repository the results, and propose any reasonable corrective action;
> (3) training and supervision of agency personnel concerning requirements and procedures relating to accuracy and completeness and the reporting of information to the central repository, and

(4) limiting direct access to criminal history record information to authorized personnel.

(b) The central repository shall:

(1) develop and implement uniform documents, forms, codes, terminology and procedures for use by criminal justice agencies in the District of Columbia in collecting and maintaining criminal history record information and reporting such information to the central repository;
(2) develop and implement procedures to ensure that the subjects of criminal history records in its database are positively identified by fingerprint comparison or by a reliable biometric identification methods and that criminal history record information reported by criminal justice agencies is linked to the proper record subjects and charges;
(3) develop and implement procedures to monitor the submission of fingerprints and criminal history record information to the central repository and to detect and obtain fingerprints and information that are not reported in a complete and timely manner; and
(4) conduct an audit every two years of randomly selected records of the central repository and criminal justice agencies that submit criminal history record information to the repository to evaluate the accuracy and completeness of the repository's criminal history record database and to verify adherence to the requirements of this chapter and other applicable legal requirements, and certify the results to the Criminal Justice Information Systems Advisory Board and propose any reasonable corrective actions.

Section 9. Security of Criminal History Record Information.

Criminal justice agencies shall:

(a) develop and implement rules, procedures, policies and provide adequate facilities to reasonably protect criminal history record information from unauthorized access, disclosure, modification or destruction and from accidental or deliberate damage by theft, sabotage, fire, flood, wind, power failure or other such risks or hazards;

(b) ensure that access to criminal history record information by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency is provided only to criminal justice agencies; and

(c) provide training, supervision and disciplinary measures for officers, employees, contractors and other persons working with or having access to criminal history record information concerning security requirements and procedures.

Section 10. Civil and Criminal Penalties.

(a) Civil Action. Failure of an official or employee of a criminal justice agency to comply with a requirement of this chapter or a regulation adopted under this chapter shall not be a basis for civil liability, but may be the basis for employee discipline or administrative action to restrict a person's or agency's access to information. However, a person whose criminal history record information has been released or used in knowing violation of this chapter or a regulation adopted under this chapter may bring an action for damages or injunctive relief in the District of Columbia Superior Court.

(b) Criminal Penalties.

(1) Any official, employee or agent of a criminal justice agency who knowingly furnishes criminal history record information to a person who is not authorized by law to receive the information is guilty of a misdemeanor for each single violation, punishable by a fine of not more than $250 and/or not more than 90 days in jail, and the Corporation Counsel is responsible for prosecution.

(2) Any person authorized by law to receive criminal history record information who knowingly furnishes the information to a person who is not authorized by law to receive the information is guilty of a misdemeanor for each single violation, punishable by a fine of not more than $250 and/or not more than 90 days in jail, and the Corporation Counsel is responsible for prosecution.

(3) Any person who, knowing he or she is not authorized by law to receive criminal history record information, knowingly buys, receives or possesses such information is guilty of a misdemeanor for each single violation, punishable by a fine of not more than $250 and/or not more than 90 days in jail, and the Corporation Counsel is responsible for prosecution.

Information Technology Advisory Committee

Criminal Justice Information System Legislative Group

District of Columbia
Criminal Justice Information System Legislation

LEGISLATIVE HISTORY

Introduction

The following legislative history details only those sections in which the Working Group, assembled to develop the legislation, engaged in detailed discussion. In these instances, the language of the section is provided, followed by a brief description of the opinions of the Working Group members.

Legislative History

Section 1, (1), (f) – Records of traffic violations which are punishable by a maximum term of imprisonment of ninety days or less

And
Section 1, (1) (g) – Records of municipal regulation violations which are punishable by a maximum term of imprisonment of ninety days or less

The Code of Federal Regulations (Title 28, Chapter I, Part 20) and most states do not include traffic and municipal regulations as part of Criminal History Record Information (CHRI). In determining which, if any, records of D.C. traffic and municipal regulation violations should be defined as CHRI, the Working Group reviewed the offenses prosecuted by the Office of the Corporation Counsel (OCC). OCC prosecutes the majority of these types of offenses. In making their determination, the Group felt that rather than identify CHRI offenses by charge, CHRI should be defined by length of penalty. After reviewing the OCC offenses, the Group determined that any offenses punishable by a maximum term of imprisonment of ninety days or less should **not** be considered CHRI. This implies that the following OCC charges would be included in CHRI:

OFFENSE	COLLATERAL	BOND	PENALTY
Cruelty to Animals	X	X	$250 and/or 180 days
Driving Under the Influence (2nd Offense)	X	$500	$1-5,000 and/or 1 yr
Driving Under the Influence (3rd Offense)	X	$500	$2-10,000 and/or 1 yr
Driving While Intoxicated (2nd Offense)	X	$500	$1-5,000 and/or 1 yr
Driving While Intoxicated (3rd Offense)	X	$500	$2-10,000 and/or 1 yr
Operating While Impaired (3rd Offense)	X	$300	$1-5,000 and/or 1 yr
Failure to Appear for Citation	X	X	$ § max or 180 days
False Fire Report	$300	X	$100 and/or 6 mos
Indecent Exposure to Minors	X	X	$1,000 and/or 1 yr
Indecent Proposal to Minors	X	X	$1,000 and/or 1 yr
Leaving After Colliding PI (1st Offense)	X	$500	$500 and/or 6 mos
Leaving After Colliding PI (2nd Offense)	X	$500	$1,000 and/or 1 yr
OAS/OAR (1st Offense)	X	$300	$5,000 and/or 1yr
OAS/OAR (2nd Offense)	X	X	$7,500 and/or 18 mos
OAS/OAR (3rd Offense)	X	X	$15,000 and/or 3 yrs
Peddling Drug Implements	X	$300	$500 and/or 6 mos
Reckless Driving (2nd Offense)	X	$100	$1,000 and/or 1 yr
Selling Alcohol to Minor	X	$500	$1,000 and/or 1 yr
Unregistered Firearm	X	X	$1,000 and/or 1 yr
Unregistered Ammunition	X	X	$1,000 and/or 1 yr
Welfare Fraud	X	$300	$500 and/or 1 yr

As to Section 1, (1), g, one member suggested that the language specifically refer to OCC municipal regulations and not all municipal regulations. The United States Attorney's Office currently prosecutes some municipal regulations. This member contended that none of the USAO prosecuted municipal regulations should be excluded from CHRI. The member offered the following language for Section 1, (1), g, "Records of municipal regulation violations **prosecuted by the Office of Corporation Counsel** which are punishable by a maximum term of imprisonment of ninety days or less." This language

was not considered further because the sponsoring member could no longer attend Working Group meetings.

Section 1, (5) – The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, prosecution, defense attorneys (with respect to the records of their client defendants), adjudication…

The Public Defender is not defined as a criminal justice agency in the Title 28, Chapter I, Part 20 of the Code of Federal Regulations or in most state legislation, primarily because public defenders in other jurisdictions are private attorneys. In the District of Columbia, DCMR 1004.2 states, "the term law enforcement agent shall be limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, **defense attorneys (with respect to the records of their client defendants),** police officers…"

The primary benefit of being defined a criminal justice agency is direct terminal access to CHRI. As a criminal justice agency, on the other hand, an agency is also responsible for the various requirements defined within the CJIS legislation (e.g., audits, training, implementation of procedures, etc.)

The Working Group considered three options in deciding on the current language of this section:

(1) **Strike the term "defense"** – The Working Group recognized that the Public Defender situation in the District is unique in that defendants may be represented by private attorneys (e.g., CJA) or public attorneys (Public Defender Service). Striking the term entirely not only dismissed this distinction, but also current D.C. municipal regulations.

(2) **Change "defense to Public Defender"** – The Working Group discussed language that would define only the Public Defender as a criminal justice agency. Two opposing views were expressed for this option:

For: The Public Defender is a government agency, held accountable as a public entity. On the other hand, private attorneys are accountable only as private individuals. Therefore, limitation of "defense" to include the Public Defender only is a matter of agency versus individual accountability. As the government cannot possibly track and monitor every private attorney, the CJIS legislation should be limited to Public Defender

Against: The Public Defender should not have more access to information than, for example, a CJA attorney. If the point of a defense is to provide the best defense possible, than there should be no distinction between a public and a private defender when it comes to access to information. The legislation should not distinguish between PDS and private defense attorneys

(3) **Adopt existing DCMR language, "defense attorneys (with respect to the records of their client defendants)"** – Given the inability to reach consensus, the Working Group decided to adopt the language of DCMR 1004.2

The Working Group also decided to include the services of Youth Services Administration (YSA) as part of Section 1, (5). The Group determined that situations might arise where YSA would need direct access to review adult arrest records to ensure proper processing of juveniles.

Section 1, (2) "Central repository" or "repository" means the information system developed and operated by [Name of Agency] pursuant to Section 3 to serve as the central repository of criminal history records for the District of Columbia. For purposes of this chapter, the central repository shall be considered to be a criminal justice agency.
AND

Section 3. Duties of the [Repository Agency Head] Regarding Information Systems. The [Head of the agency that houses the repository] shall:

(a) establish, maintain and operate an information system which shall serve as the central repository of criminal history record information for the District of Columbia and shall collect, store and disseminate criminal history record information as provided in this chapter;

The Working Group acknowledged the establishment, staffing, operation and maintenance of the Central Repository requires a long-term commitment, and substantial budget and administrative investments on behalf of the host agency. The Working Group postulated this weighty responsibility is a commitment that is better requested than delegated.

The Working Group determined that while Title 28 did not require a Central Repository, it was written as if it were a requirement, and that all states have identified a Central Repository as their official custodian for CHRI. The Working Group learned from the legislative intent in the Appendix to Title 28, Part 20, that:

"Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word 'should' is permissive; it suggests but does not mandate a central State repository."

The Working Group felt it was correct for the District of Columbia to designate an agency as the Central Repository as if the District were a state, and the designated agency, a state agency. The District does require either enabling legislation or an executive order with that designation.

"A central State repository is a State agency having the function pursuant to a statute or executive order of maintaining comprehensive statewide criminal history record information files."

The Working Group considered that a number of states have not designated the State Police as the administrator of the Central Repository. The Central Repository in some states is an independent agency in others within a large centralized justice executive agency, and in others, an independent unit within a criminal justice agency such as a

State Police Department. Each of these alternatives is viable for the District of Columbia, particularly with the mix or Federal and municipal agencies.

"Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services."

The Working Group discussed the options and determined that while the Metropolitan Police Department is the most obvious Central Repository designee, that the Department, rather than the Working Group, is best able to analyze and then accept or reject that responsibility.

Section 3, (e) – promulgate appropriate regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act…

The Working Group recognized that CHRI reporting agencies in the District of Columbia would be both local and federal entities. In creating local legislation, the Working Group noted that the Federal CJCC agencies must determine if Federal legislation is needed to ensure the participation of the District's Federal partners in creating and maintaining an accurate and efficient criminal justice information system. The Working Group asks, upon Criminal Justice Coordinating Council (CJCC) review, the Federal members put forth federal language, if necessary, to compliment the language of this legislation.

Section 4, (a) – Fingerprinting at Arrest. Following an arrest, the arresting officer shall, without undue delay, take or cause to be taken the fingerprints of the arrested persons if an offense which is the basis of the arrest is an offense that qualifies as criminal history record information.

As defined in Section 1, CHRI has two critical components: identification and notations of criminal justice events (e.g., arrests, detentions, indictments). The purpose of Section 4 is to establish fingerprinting as the mechanism for identification.

The initial proposed language for this section was, "Following an arrest, the arresting officer shall, without undue delay, take or cause to be taken the fingerprints of the arrested person." This language implied that all arrested persons, irrespective of the offense for which the arrest occurred, would be fingerprinted. The rationale behind this suggestion was procedural. As noted, CHRI must include both identification and notations of criminal justice events; if either component is missing, then the record is simply that, a record. By taking the fingerprints of all arrested individuals, the potential of not capturing the identification of a person arrested for a CHRI offense is eliminated.

This initial language provoked two objections. Both arguments contributed to the adoption of the current language of this section.

(1) Privacy: Working Group members questioned the government action of fingerprinting everyone arrested, asserting that universal fingerprinting constitutes

an invasion of person privacy – especially when the sole justification for doing so is to avert a procedural error that may or may not occur at the time of arrest.

(2) Parameters of this Legislation: Members noted that the purpose of this legislation is to establish rules for CHRI. By extending the parameters of fingerprinting beyond CHRI offenses, via the initial proposed language, this section would overstep its intended purpose. Fingerprinting, as defined in Section 4, should only apply to the CHRI offenses identified in Section 1. The decision to fingerprint lies with the Metropolitan Police Department (MPD). MPD can decide if it wants to fingerprint all arrestees. This legislation is not intended to dictate MPD's fingerprinting policy. In sum, only persons arrested for offenses defined as CHRI in Section 1 should be fingerprinted per this legislation. Fingerprinting for additional offenses is at the discretion of MPD.

Section 1 defines some 2nd and 3rd offenses as CHRI (e.g. DWI, DUI). Those Working Group members who had taken part in the CJCC's Positive Identification Working Group noted that the only way to conclusively identify an individual as having committed a second offense or beyond is to fingerprint that person for the first offense. These members recommended that the MPD fingerprint all offenses in which the second offense or beyond qualifies as CHRI. These offenses include:

(1) Driving Under the Influence
(2) Driving While Intoxicated
(3) Operating While Impaired
(4) Reckless Driving

Section 4, (b) – At the arraignment or first appearance of a person whose court appearance has been secured by a summons issued pursuant to an accusatory instrument charging an offense covered by subsection (a), the court should order that the person be fingerprinted without undue delay.

A Working Group member raised concern with the impact of this legislation on the operations of D.C. Superior Court. The member suggested that with the passage of the Revitalization Act, the D.C. Council is restricted, in certain ways, from passing legislation that directly affects D.C. Superior Court. The member did not know if the language in this legislation applied to the restriction. The recommendation was made that the concern be recorded in the Legislative History as an issue requiring further investigation.

Section 4, (e) – Persons in charge of correctional facilities in the District of Columbia shall, without undue delay, take or maintain the fingerprints of all persons received on criminal commitment to such facilities.

The Working Group recognized that CHRI reporting agencies in the District of Columbia would be both local and federal entities (in this case the Federal Bureau of Prisons). In

creating local legislation, the Working Group noted that the Federal CJCC agencies must determine if Federal legislation is needed to ensure the participation of the District's Federal partners in creating and maintaining an accurate and efficient criminal justice information system. The Working Group asks that upon Criminal Justice Coordinating Council (CJCC) review, the Federal members put forth federal language, if necessary, to compliment the language of this legislation.

Section 5, (a) – Agency Reporting Requirements. After consultation with the Criminal Justice Information System Advisory Board and affected agencies, the [Repository Agency Head] shall by regulation designate which criminal justice agencies in the District of Columbia are responsible for reporting the events described in subsection (b) of this section and the manner and form in which the events shall be reported.

The Working Group recognized that CHRI reporting agencies in the District of Columbia would be both local and federal entities. In creating local legislation, the Working Group noted that the Federal CJCC agencies must determine if Federal legislation is needed to ensure the participation of the District's Federal partners in creating and maintaining an accurate and efficient criminal justice information system. The Working Group asks that upon Criminal Justice Coordinating Council (CJCC) review, the Federal members put forth federal language, if necessary, to compliment the language of this legislation.

Section 6, (c)(1) – The identification of record subjects shall be verified by a comparison of fingerprints or other reliable biometric identification characteristics submitted by the requestor.

A Working Group member suggested that it might be appropriate to consider DNA verification as part of this section. Given the recent technological advances in DNA testing, it seems likely that the criminal justice system will become more reliant on DNA as a form of identification in the near future. Other members expressed concern that if DNA testing were adopted by the District as an identification mechanism, this legislation may require rewrite. Nothing in this draft is intended to preclude subsequent consideration and inclusion of biometric databases, such as DNA.

Section 6, (c)(2)(a) – Unless otherwise prohibited by law, Criminal History Record Information shall be disseminated in a form that reveals only entries relating to: (a) criminal convictions

In considering language for this section, the Working Group reviewed current D.C. Municipal Regulations.

(1) DCMR 1004.4: "Subject to the provisions of §§1004.1 – 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981

ed.], shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral."

(2) DCMR 1004.5: "Subject to the provisions of §§1004.1 – 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which those records are requested; except that, where an offender has been imprisoned during all or part of the preceding 10-year period, the record shall include entries relating to the earlier conviction."

The language currently in this section differs from the DCMR 1004.4 and 1004.5 in two ways. First, records of forfeitures of collateral no longer will be disseminated for non-criminal justice purposes. Second, the 10 year period is eliminated; length of time between the offense and the request for the record is no longer a consideration in record dissemination.

One Working Group member suggested that the language read, "…(a) criminal convictions for offenses committed not more than 10 years prior to the request for the records." The majority opinion of the Working Group was to adopt the language currently proposed in the legislation.

Section 10, (1)&(2)&(3) – ...punishable by a fine of not more than $250 and/or not more than 90 days in jail, and the Corporation Counsel is responsible for prosecution.

This language mimics that in existing juvenile legislation.

Information Technology Advisory Committee

Criminal Justice Information System Legislative Group

District of Columbia
Criminal Justice Information System Legislation

ATTACHMENTS

ATTACHMENT A

District of Columbia
Criminal Justice Information System Legislation

TITLE 28 -- JUDICIAL ADMINISTRATION

CHAPTER I -- DEPARTMENT OF JUSTICE

PART 20 -- CRIMINAL JUSTICE INFORMATION SYSTEMS

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER I--DEPARTMENT OF JUSTICE

PART 20--CRIMINAL JUSTICE INFORMATION SYSTEMS--Table of Contents

Subpart A--General Provisions

Sec. 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Public Law 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Public Law 92-544, 86 Stat. 111$

Sec. 20.3 Definitions.

As used in these regulations:
(a) Criminal history record information system means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.
(b) Criminal history record information means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. State and Federal Inspector General Offices are included.
(c) Criminal justice agency means:
(1) Courts;
(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.
(d) The administration of criminal justice means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. State and Federal Inspector General Offices are included.
(e) Disposition means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also

disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed--civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.
(f) Statute means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.
(g) State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.
(h) An executive order means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.
(i) Act means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended.
(j) Department of Justice criminal history record information system means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.
(k) Nonconviction data means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.
(l) Direct access means having the authority to access the criminal history record database, whether by manual or automated methods.

Sec. 20.20 Applicability.

Source: 41 FR 11715, Mar. 19, 1976, unless otherwise noted.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in subpart C.
(b) The regulations in this subpart shall not apply to criminal history record information contained in:
(1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis;
(3) Court records of public judicial proceedings;
(4) Published court or administrative opinions or public judicial, administrative or legislative proceedings;
(5) Records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses;
(6) Announcements of executive clemency.
(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

Sec. 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to OJARS by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to-
(a) Completeness and accuracy. Insure that criminal history record information is complete and accurate.
(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information unless it can be assured that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.
(2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data

collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.
(b) Limitations on dissemination. Insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:
(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;
(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;
(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and [[Page 357]]
with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof. These dissemination limitations do not apply to conviction data.
(c) General policies on use and dissemination. (1) Use of criminal history record information disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given.
(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.
(3) Subsection (b) does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.
(d) Juvenile records. Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute, court order, rule or court decision specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in paragraph (b) (3) and (4) of this section.
(e) Audit. Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated.

The reporting of a criminal justice transaction to a State, local or Federal repository is not a dissemination of information.
(f) Security. Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security standards established by State legislation, or in the absence of such legislation, by regulations approved or issued by the Governor of the State.
(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.
(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.
(3) (i) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:
(a) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.
(b) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.
(c) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.
(d) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.
(e) The programs specified in paragraphs (f)(3)(i) (b) and (d) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.
(f) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (1) the physical security of criminal history record information under its control or in its custody and (2) the protection of such information from unauthorized access, disclosure or dissemination.
(g) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.
(ii) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.
(4) The criminal justice agency will:
(i) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.
(ii) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the

provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.
(iii) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for
(a) The physical security of criminal history record information under its control or in its custody and
(b) The protection of such information from unauthorized access, disclosure, or dissemination.
(iv) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.
(v) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.
(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.
(g) Access and review. Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that-
(1) Any individual shall, upon satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;
(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;
(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;
(4) Upon request, an individual whose record has been corrected

Sec. 20.22 Certification of compliance.

(a) Each State to which these regulations are applicable shall with the submission of its plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.
(b) The certification shall include-
(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under Sec. 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;
(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;
(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and
(5) A listing setting forth categories of non-criminal justice dissemination. See Sec. 20.21(b).

Sec. 20.23 Documentation: Approval by OJARS.

Within 90 days of the receipt of the plan, OJARS shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by OJARS will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by March 1, 1978. A final certification shall be submitted on March 1, 1978.

Where a State finds it is unable to provide final certification that all required procedures as set forth in Sec. 20.21 will be operational by March 1, 1978, a further extension of the deadline will be granted by OJARS upon a showing that the State has made a good faith effort to implement these regulations to the maximum extent feasible. Documentation justifying the request for the extension including a proposed timetable for full compliance must be submitted to OJARS by March 1, 1978. Where a State submits a request for an extension, the implementation date will be extended an additional 90 days while OJARS reviews the documentation for approval or disapproval. To be approved, such revised schedule must be consistent with the timetable and procedures set out below:
(a) July 31, 1978--Submission of certificate of compliance with:
(1) Individual access, challenge, and review requirements;
(2) Administrative security;
(3) Physical security to the maximum extent feasible.
(b) Thirty days after the end of a State' s next legislative session--Submission to OJARS of a description of State policy on dissemination of criminal history record information.
(c) Six months after the end of a State's legislative session--Submission to OJARS of a brief and concise description of standards and operating procedures to be followed by all criminal justice agencies covered by OJARS regulations in complying with the State policy on dissemination.
(d) Eighteen months after the end of a State' s legislative session--Submission to OJARS of a certificate attesting to the conduct of an audit of the State central repository and of a random number of other criminal justice agencies in compliance with OJARS regulations.

Sec. 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

Sec. 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed $10,000. In addition, OJARS may initiate fund cut-off procedures against recipients of OJARS assistance.

Sec. 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

Sec. 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.
(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for non-criminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.
(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

Sec. 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant adult and juvenile offenses.
(b) Excluded from such a system are arrests and court actions limited only to non-serious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run).
(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 1601-92. 57 FR 31318. July 15. 19921

Sec. 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:
(1) To criminal justice agencies for criminal justice purposes; and
(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.
(3) Pursuant to Public Law 92-544 (86 Stat. 1115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. Refer to Sec. 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph.
(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.
(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.
(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 1438-90, 55 FR 32075, Aug. 7, 1990]

Sec. 20.34 Individual's right to access criminal history record information.

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required

processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.
(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his challenge as to the accuracy or completeness of any entry on his record to the Assistant Director of the FBI Identification Division, Washington, DC 20537. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. If the contributing agency corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 805-78, 43 FR 50173, Oct. 27, 1978]

Sec. 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.
(a) (1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.
(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.
(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.
(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these regulations.
(d) The Board shall review and consider, on a continuing basis, security and privacy aspects of the NCIC system and shall, as needed, appoint ad hoc subcommittees to provide information and recommendations to the Board concerning security and privacy of the NCIC system.
(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.
(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770.
(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these regulations.

(28 U.S.C. 509, 510, 534; 5 U.S.C. 301)

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 819-79. 44 FR 12031. Mar. 5. 1979.

Sec. 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.
(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

Sec. 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

Sec. 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of subpart C.

Appendix to Part 20--Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

Subpart A--Sec. 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history. (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal

justice transactions occur in records other than the traditional ''rap sheet'' such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

Sec. 20.3(c). The definitions of criminal justice agency and administration of criminal justice of Sec. 20.3(c) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

Sec. 20.3(e). Disposition is a key concept in section 524(b) of the Act and in Sec. 20.21(a)(1) and Sec. 20.21(b). It, therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.
Sec. 20.3(k). The different kinds of acquittals and dismissals as delineated in Sec. 20.3(e) are all considered examples of nonconviction data.

Subpart B--Sec. 20.20(a). These regulations apply to criminal justice agencies receiving funds under the Omnibus Crime Control and Safe Streets Act for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulation of manual systems, therefore, is authorized by section 524(b) when coupled with section 501 of the Act which authorizes the Administration to establish rules and regulations ''necessary to the exercise of its functions * * *.''

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

Limitations as contained in subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

Sec. 20.20 (b) and (c). Section 20.20 (b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know. Court records of public judicial proceedings are also exempt from the provisions of the regulations.
Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: ''Was X arrested by your agency on January 3, 1975'' and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in Sec. 20.21(b) may be disseminated without limitation.
Sec. 20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering Secs. 20.21(b) and 20.21(f).

Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word ''should'' is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable

time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most non-criminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

Sec. 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the ''privacy of all information is adequately provided for and that information shall only h~ used for law enforcement and criminal justice and other lawful purposes.'' The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

For example, Civil Service suitability investigations are conducted under Executive Order 10450. This is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

Sec. 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

Sec. 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for research purposes. As with the agencies designated in Sec. 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically ''certification'' criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

''Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action suit, or other judicial or administrative proceedings.''

LEAA anticipates issuing regulations, pursuant to section 524(a) as soon as possible.

Sec. 20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

Sec. 20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in Sec. 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to non-conviction data.

Sec. 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

Sec. 20.21(e) Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a representative sample'' of agencies are the next best alternative. The term ''representative sample'' is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for ''no record'' responses.

Sec. 20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

Sec. 20.21(g)(1). A challenge'' under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge. The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that States ought to be free to determine other means of identity verification.
Sec. 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under 20.21(e) must be kept so that notification can be made.

Sec. 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history record information and does not include other information such as intelligence or treatment data.
Sec. 20.22(a). The purpose for the certification requirement is to indicate the extent of compliance with these regulations. The term ''maximum extent feasible'' acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.
Note: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Reports No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

Subpart C--Sec. 20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for Federal, state and local agencies.
Sec. 20.32. The grandfather clause contained in the third paragraph of this section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the nonincludable offenses which were stored prior to February 1973. In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

Section 20.33. Incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the Federal Government for non-criminal justice purposes.

Sec. 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.3034. The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows: If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure.

1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.
2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, DC, by mail. The individual will then be afforded the opportunity to see that record.
3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the State's central identification agency.
4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

Sec. 20.36. This section refers to the requirements for obtaining direct access to the CCH file.

Sec. 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart s in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

[Order No. 662-76, 41 FR 34949, Aug. 18, 1976, as amended by Order No. 1438-90, 55 FR 32075, Aug. 7, 1990]

ATTACHMENT B

District of Columbia
Criminal Justice Information System Legislation

Project Commencement Document Prepared by SEARCH Group Inc. and the Information Technology Liaison Officer

ATTACHMENT C

District of Columbia
Criminal Justice Information System Legislation

Recommendations of the Information Technology Advisory Committee's

Privacy & Security Working Group

Security Policy Considerations for Justice Agencies in the District of Columbia

Legislative Opportunities and Considerations

This Paradigms and Prototype document was prepared by the ITAC's Privacy and Security Working Group with the overall objective to offer the justice community of the District of Columbia opportunities to:

- conduct a brief examination of information related challenges,
- stimulate dialogue between and among personnel with differing assignments and varying levels of responsibility within participating justice agencies,
- achieve clarity through consensus on definitions and classifications,
- trigger a plan of action to address the challenges.

The "models" offered in each section are central to this objective. Each agency is invited to compare and contrast their policies with these models. Agencies without prior policy development should consider the models as incentive to develop policies specifically addressing agency requirements. Prior to any attempt to either re-write existing policy or create new policies, justice agency executives should review both District of Columbia law and regulations and the Criminal Justice Information System (CJIS) regulations.

As important as individual agency policies are, it is perhaps more important to have consistent definitions, classifications and designations in analogous policies across local and federal agencies. Nationally, the foundation for that consistency has been the CJIS Regulation. This chapter examines that regulation and the District's justice community's opportunity to build upon that same foundation.

On ten occasions since 1974, a national analysis of state privacy and security legislation has been conducted. The analyses are based upon surveys examining how comprehensively each state has addressed the issues that were the causal underpinning of the Federal regulation on Criminal History Information Systems (CJIS CFR). The CJIS CFR was categorized into 28 survey aspects. The results of the survey were last presented in ***The Compendium of State Privacy and Security Legislation: 1997 Overview***, prepared by SEARCH Group, and published by the Bureau of Justice Statistics. The Compendium has been edited for this paper to present a comparison between the legislative

environment for CJIS in the District of Columbia and that environment in the other states. The CJIS CFR can be found in the Appendix.

Three charts from the Compendium follow this page. The first chart identifies the 28 subject matter categories that are representative of the primary topics of the CJIS regulation. The second chart, "Comparison of Changes," identifies the number of states that have addressed each of the 28 CJIS subject matter categories through legislation. You will note that the number of states with such legislation has increased dramatically since the initial survey in 1974. The third chart, representing only the District of Columbia, indicates a paucity of supporting law and regulation in those same 28 categories. A copy of the laws and regulations referenced in this chart are found in the Appendix.

The information in these charts demonstrate a need for the District of Columbia criminal justice community to examine opportunities to establish, and clarify where appropriate, the city's laws and regulations for each of the 28 subject matter categories through a mutually agreed upon set of standard definitions, classifications and responsibilities.

A strong foundation from which the justice community can build the future is through District of Columbia legislation for Criminal Justice Information Systems. To do so, an assembly of specialists is required. They must have expertise in:

- the unique functional relationships between the District's justice agencies,
- practical solutions to justice processing dilemmas,
- the vocabulary of the District's justice process,
- records and information system management requirements,
- insight into the citizen's needs and requirements,
- national criminal justice system responsibilities,
- standards for criminal justice information systems established by national regulations and laws.

The District is fortunate in that all areas of expertise, save one, are currently represented by the participating agencies of the Criminal Justice Coordinating Council. That one area of expertise not covered, Federal law and regulation affecting criminal justice information systems, is easily obtainable. What is most critical to this initiative, and has been absent to date, is a system-wide recognition of this critical need and the will to address the challenge.

Model Criminal Justice Information System Legislation

Model Legislation

Title 28, Chapter I, Part 20, Criminal Justice Information Systems (CJIS) in included in the appendix to this document. It is the seminal document for all

state and local codes, laws and regulations on the subject. As witnessed by the survey results in the Compendium, virtually every state has incorporated appropriate sections of this Title from the Code of Federal Regulations (CFR) in their state law, regulations and procedures.

While the selection of available state CJIS laws is large and varied, a single state law is offered for consideration as a model. The section of this particular state law was based upon four criteria: the law closely parallels the CJIS CFR, the law establishes a governance structure very similar to the governance structure developed by the District, expertise and additional information regarding legislative intent is easily accessible, and the ITLO has had experience with this particular law.

ATTACHMENT D

District of Columbia
Criminal Justice Information System Legislation

Recommendations of the Criminal Justice Coordinating Council's

Positive Identification Working Group